



April 1, 2005

ENGROSSED HOUSE BILL No. 1822

DIGEST OF HB 1822 (Updated March 31, 2005 9:48 am - DI 87)

Citations Affected: IC 4-22.

Synopsis: Small business regulation. Requires an agency that intends to adopt a rule that will impose requirements or costs on small businesses to prepare an economic impact statement for the rule. Provides that the statement must include a regulatory flexibility analysis that evaluates alternative regulatory methods that could minimize the impact on small businesses. Requires the agency to: (1) publish the statement with the notice of public hearing for the rule; and (2) submit the statement and the rule to the Indiana economic development corporation. Requires the agency to consider the corporation's written comments on the rule before adopting the rule. Provides that a small business aggrieved by a rule finally adopted by an agency may bring an action to determine whether the agency complied with the requirements concerning small businesses during the rulemaking process. Provides that before readopting a rule expiring after June 30, 2005, an agency must reevaluate the rule's impact on small businesses.

Effective: July 1, 2005.

Austin, Borrer

(SENATE SPONSORS — LANANE, FORD, GARD)

January 25, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.

February 14, 2005, reported — Do Pass.

February 17, 2005, read second time, ordered engrossed.

February 18, 2005, engrossed.

February 21, 2005, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

March 31, 2005, amended, reported favorably — Do Pass.

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EH 1822—LS 7761/DI 101+



April 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1822

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-22-2-24 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) An agency shall
3 notify the public of its intention to adopt a rule by complying with the
4 publication requirements in subsections (b) and (c).

5 (b) The agency shall cause a notice of a public hearing to be
6 published once in one (1) newspaper of general circulation in Marion
7 County, Indiana. To publish the newspaper notice, the agency shall
8 directly contract with the newspaper.

9 (c) The agency shall cause:

10 (1) a notice of public hearing; ~~and~~

11 (2) the full text of the agency's proposed rule (excluding the full
12 text of a matter incorporated by reference under section 21 of this
13 chapter); **and**

14 (3) **after June 30, 2005, any statement required by**
15 **IC 4-22-2.1-5;**

16 to be published once in the Indiana Register. To publish the notice, ~~and~~
17 proposed rule, **and statement by IC 4-22-2.1-5** in the Indiana

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Register, the agency shall submit the text to the publisher. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) The agency shall include in the notice required by subsections (b) and (c):

- (1) a statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened;
- (2) a general description of the subject matter of the proposed rule; and
- (3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

SECTION 2. IC 4-22-2-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. (a) **Before July 1, 2005**, the Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. **After June 30, 2005, the Indiana economic development corporation established by IC 5-28-3-1:**

(1) shall review a proposed rule that:

- (A) imposes requirements or costs on small businesses (as defined in IC 4-22-2.1-4); and**
- (B) is referred to the corporation by an agency under IC 4-22-2.1-5(c); and**

(2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).

After conducting a review under subdivision (1) or (2), the corporation may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council or the

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Indiana economic development corporation concerning the council's or the corporation's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall ~~also~~ submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars (\$500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. Except as provided in subsection (c), before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

(1) state; and

(2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis, **including any economic impact statement prepared by the agency under IC 4-22-2.1-5**. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9:

(1) the department of environmental management shall give written notice to the legislative services agency of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and

(2) the legislative services agency shall prepare the fiscal analysis referred to in subsection (b) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

SECTION 3. IC 4-22-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

(1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section 24 of this chapter;

(2) subject to subsection (b), adopt a rule that consolidates part or

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all of two (2) or more proposed rules published in the Indiana Register under section 24 of this chapter and considered under section 27 of this chapter;

(3) subject to subsection (b), adopt part of one (1) or more proposed rules described in ~~subsection (a)(2)~~ **subdivision (2)** in two (2) or more separate adoption actions; or

(4) subject to subsection (b), adopt a revised version of a proposed rule published under section 24 of this chapter and include provisions that did not appear in the published version, **including any provisions recommended by the Indiana economic development corporation under IC 4-22-2.1-6(a), if applicable.**

(b) An agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section 24 of this chapter, unless it is a logical outgrowth of any proposed rule as supported by any written comments submitted:

(1) during the public comment period; or

(2) **by the Indiana economic development corporation under IC 4-22-2.1-6(a), if applicable.**

SECTION 4. IC 4-22-2.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 2.1. Rules Affecting Small Businesses

Sec. 1. Except for a rule that is the subject of a rulemaking action under IC 13-14-9, this chapter applies to a rule for which the notice required by IC 4-22-2-23 is published by an agency after June 30, 2005.

Sec. 2. The definitions in IC 4-22-2-3 apply throughout this chapter.

Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 4. As used in this chapter, "small business" means any person, firm, corporation, limited liability company, partnership, or association that:

(1) **is actively engaged in business in Indiana and maintains its principal place of business in Indiana;**

(2) **is independently owned and operated;**

(3) **employs one hundred (100) or fewer full-time employees; and**

(4) **has gross annual receipts of five million dollars**

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1 (\$5,000,000) or less.

2 **Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2**
 3 **that will impose requirements or costs on small businesses, the**
 4 **agency shall prepare a statement that describes the annual**
 5 **economic impact of a rule on all small businesses after the rule is**
 6 **fully implemented as described in subsection (b). The statement**
 7 **required by this section must include the following:**

8 (1) An estimate of the number of small businesses, classified
 9 by industry sector, that will be subject to the proposed rule.

10 (2) An estimate of the average annual reporting, record
 11 keeping, and other administrative costs that small businesses
 12 will incur to comply with the proposed rule.

13 (3) A estimate of the total annual economic impact that
 14 compliance with the proposed rule will have on all small
 15 businesses subject to the rule. The agency is not required to
 16 submit the proposed rule to the legislative services agency for
 17 a fiscal analysis under IC 4-22-2-28 unless the estimated
 18 economic impact of the rule is greater than five hundred
 19 thousand dollars (\$500,000) on all regulated entities, as set
 20 forth in IC 4-22-2-28.

21 (4) A statement justifying any requirement or cost that is:

22 (A) imposed on small businesses by the rule; and

23 (B) not expressly required by:

24 (i) the statute authorizing the agency to adopt the rule;
 25 or

26 (ii) any other state or federal law.

27 The statement required by this subdivision must include a
 28 reference to any data, studies, or analyses relied upon by the
 29 agency in determining that the imposition of the requirement
 30 or cost is necessary.

31 (5) A regulatory flexibility analysis that considers any less
 32 intrusive or less costly alternative methods of achieving the
 33 purpose of the proposed rule. The analysis under this
 34 subdivision must consider the following methods of
 35 minimizing the economic impact of the proposed rule on small
 36 businesses:

37 (A) The establishment of less stringent compliance or
 38 reporting requirements for small businesses.

39 (B) The establishment of less stringent schedules or
 40 deadlines for compliance or reporting requirements for
 41 small businesses.

42 (C) The consolidation or simplification of compliance or

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reporting requirements for small businesses.

(D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

(E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

(b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to small businesses or certain types of small businesses; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all small businesses that will be affected by the rule.

In determining the total annual economic impact of the rule under subsection (a)(3), the agency shall consider the annual economic impact on all small businesses beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total annual economic impact of a rule under subsection (a)(3).

(c) The agency shall:

(1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and

(2) deliver a copy of the statement, along with the proposed rule, to the Indiana economic development corporation not later than the date of publication under subdivision (1).

Sec. 6. (a) Not later than seven (7) days before the date of the public hearing set forth in the agency's notice under IC 4-22-2-24, the corporation shall do the following:

(1) Review the proposed rule and economic impact statement submitted to the corporation by the agency under section 5(c) of this chapter.

(2) Submit written comments to the agency on the proposed rule and the economic impact statement prepared by the

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agency under section 5 of this chapter. The corporation's comments may:

(A) recommend that the agency implement one (1) or more of the regulatory alternatives considered by the agency under section 5(a)(5) of this chapter;

(B) suggest regulatory alternatives not considered by the agency under section 5(a)(5) of this chapter;

(C) recommend any other changes to the proposed rule that would minimize the economic impact of the proposed rule on small businesses; or

(D) recommend that the agency abandon or delay the rulemaking action until:

(i) more data on the impact of the proposed rule on small businesses can be gathered and evaluated; or

(ii) less intrusive or less costly alternative methods of achieving the purpose of the proposed rule can be effectively implemented with respect to small businesses.

(b) Upon receipt of the corporation's written comments under subsection (a), the agency shall make the comments available:

(1) for public inspection and copying at the offices of the agency under IC 5-14-3;

(2) electronically through the electronic gateway administered by the intelenet commission; and

(3) for distribution at the public hearing required by IC 4-22-2-26.

(c) Before finally adopting a rule under IC 4-22-2-29, and in the same manner that the agency considers public comments under IC 4-22-2-27, the agency must fully consider the comments submitted by the corporation under subsection (a). After considering the comments under this subsection, the agency may:

(1) adopt any version of the rule permitted under IC 4-22-2-29; or

(2) abandon or delay the rulemaking action as recommended by the corporation under subsection (a)(2)(D), if applicable.

Sec. 7. Before an agency may act under IC 4-22-2.5 to readopt a rule to which the chapter applies, the agency must conduct the review required under IC 4-22-2.5-3.1.

Sec. 8. (a) This section applies to a small business that is adversely affected or aggrieved by a rule that:

(1) is subject to this chapter;

(2) is finally adopted by an agency under IC 4-22-2-29; and

(3) has taken effect under IC 4-22-2-36.

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(b) In addition to or instead of filing a complaint with the administrative rules oversight committee under IC 2-5-18-8, and subject to subsection (c), a small business described in subsection (a) may file, in a court having jurisdiction, an action seeking a determination of the agency's compliance with the requirements of this chapter during the rulemaking process. Upon receipt of a complaint under this section, the court shall, at the earliest date possible, hear evidence on the matter and make a determination as to the agency's compliance with this chapter during the rulemaking process. If the court determines that the agency failed to comply with one (1) or more requirements of this chapter, the court may issue an order or injunction enjoining the agency from enforcing the rule with respect to the complaining small business and any similarly situated small businesses. A determination of the court under this section is final, subject to the right of direct appeal by either party.

(c) A small business that seeks a determination by a court under subsection (b) must file the action described in subsection (b) not later than one year (1) after the date the rule described in subsection (a) takes effect under IC 4-22-2-36.

SECTION 5. IC 4-22-2.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) An agency that wishes to readopt a rule that is subject to expiration under this chapter must:

(1) follow the procedure for adoption of administrative rules under IC 4-22-2; and

(2) for a rule that expires under this chapter after June 30, 2005, conduct any review required under section 3.1 of this chapter.

(b) An agency may adopt a rule under IC 4-22-2 in anticipation of a rule's expiration under this chapter.

(c) An agency may not use IC 4-22-2-37.1 to readopt a rule that is subject to expiration under this chapter.

SECTION 6. IC 4-22-2.5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.1. (a) This section applies to a rule that:

(1) expires under this chapter after June 30, 2005; and

(2) imposes requirements or costs on small businesses.

(b) As used in this section, "small business" has the meaning set forth in IC 4-22-2.1-4.

(c) Before an agency may act under section 3 of this chapter to

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1 readopt a rule described in subsection (a), the agency shall conduct
 2 a review to consider whether there are any alternative methods of
 3 achieving the purpose of the rule that are less costly or less
 4 intrusive, or that would otherwise minimize the economic impact
 5 of the proposed rule on small businesses. In reviewing a rule under
 6 this section, the agency shall consider the following:

- 7 (1) The continued need for the rule.
 8 (2) The nature of any complaints or comments received from
 9 the public, including small businesses, concerning the rule or
 10 the rule's implementation by the agency.
 11 (3) The complexity of the rule, including any difficulties
 12 encountered by:
 13 (A) the agency in administering the rule; or
 14 (B) small businesses in complying with the rule.
 15 (4) The extent to which the rule overlaps, duplicates, or
 16 conflicts with other federal, state, or local laws, rules,
 17 regulations, or ordinances.
 18 (5) The length of time since the rule was last reviewed under
 19 this section or otherwise evaluated by the agency, and the
 20 degree to which technology, economic conditions, or other
 21 factors have changed in the area affected by the rule since
 22 that time.

23 (d) This subsection applies to a rule that was adopted through
 24 a rulemaking action initiated by the agency under IC 4-22-2-23
 25 after June 30, 2005. In reviewing the rule under this section, the
 26 agency shall reexamine the most recent economic impact statement
 27 prepared by the agency under IC 4-22-2.1-5. The agency shall
 28 consider:

- 29 (1) the degree to which the factors analyzed in the statement
 30 have changed since the statement was prepared; and
 31 (2) whether:
 32 (A) any regulatory alternatives included in the statement
 33 under IC 4-22-2.1-5(a)(5); or
 34 (B) any regulatory alternatives not considered by the
 35 agency at the time the statement was prepared;
 36 could be implemented to replace one (1) or more of the rule's
 37 existing requirements.

38 (e) After conducting the review required by this section, the
 39 agency shall:

- 40 (1) readopt the rule without change, if no alternative
 41 regulatory methods exist that could minimize the economic
 42 impact of the rule on small businesses while still achieving the

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1 **purpose of the rule;**

2 **(2) amend the rule to implement alternative regulatory**
 3 **methods that will minimize the economic impact of the rule on**
 4 **small businesses; or**

5 **(3) repeal the rule, if the need for the rule no longer exists.**

6 SECTION 7. IC 4-22-2.5-4 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as
 8 provided in subsection (b) **and subject to section 3.1 of this chapter**,
 9 an agency may readopt all rules subject to expiration under this chapter
 10 under one (1) rule that lists all rules that are readopted by their titles
 11 and subtitles only. A rule that has expired but is readopted under this
 12 subsection may not be removed from the Indiana Administrative Code.

13 (b) If, not later than thirty (30) days after an agency's publication of
 14 notice of its intention to adopt a rule under IC 4-22-2-24 using the
 15 listing allowed under subsection (a), a person submits to the agency a
 16 written request and the person's basis for the request that a particular
 17 rule be readopted separately from the readoption rule described in
 18 subsection (a), the agency must:

19 (1) readopt that rule separately from the readoption rule described
 20 in subsection (a); and

21 (2) follow the procedure for adoption of administrative rules
 22 under IC 4-22-2 with respect to the rule.

23 (c) If the agency does not receive a written request under subsection
 24 (b) regarding a rule within thirty (30) days after the agency's
 25 publication of notice, the agency may:

26 (1) submit the rule for filing with the secretary of state under
 27 IC 4-22-2-35 and publish notice in the Indiana Register that the
 28 agency has readopted the rule; or

29 (2) elect the procedure for readoption under IC 4-22-2.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Small Business, to which was referred House Bill 1822, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORROR, Chair

Committee Vote: yeas 11, nays 0.

 SENATE MOTION

Madam President: I move that Senator Gard be added as cosponsor of Engrossed House Bill 1822.

LANANE

 COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred House Bill No. 1822, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 28, delete "office of economic development" and insert **"Indiana economic development corporation"**.

Page 2, line 29, delete "IC 4-1.5-7-1:" and insert **"IC 5-28-3-1:"**.

Page 2, line 33, delete "office" and insert **"corporation"**.

Page 2, line 38, delete "office" and insert **"corporation"**.

Page 2, line 42, delete "office of" and insert **"Indiana economic development corporation"**.

Page 3, line 1, delete "economic development".

Page 3, line 1, delete "office's" and insert **"corporation's"**.

Page 4, line 10, delete "office of" and insert **"Indiana economic development corporation"**.

Page 4, line 11, delete "economic development".

Page 4, line 18, delete "office of economic development" and insert **"Indiana economic development corporation"**.

Page 4, line 30, after "chapter," delete ""office"" and insert

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""corporation"".

Page 4, line 30, delete "office of" and insert **"Indiana economic development corporation"**.

Page 4, line 31, delete " economic development".

Page 4, line 31, delete "IC 4-1.5-7-1." and insert **"IC 5-28-3-1."**

Page 6, line 31, delete "office of economic development" and insert **"Indiana economic development corporation"**.

Page 6, line 35, delete "office" and insert **"corporation"**.

Page 6, line 37, delete "office" and insert **"corporation"**.

Page 6, line 41, delete "office's" and insert **"corporation's"**.

Page 7, line 16, delete "office's" and insert **"corporation's"**.

Page 7, line 27, delete "office" and insert **"corporation"**.

Page 7, line 32, delete "office" and insert **"corporation"**.

and when so amended that said bill do pass.

(Reference is to HB 1822 as printed February 15, 2005.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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